IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1089 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

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Appearance:

MR KS JHAVERI for Petitioners

MR BG JANI for Respondent No. 1

MR ST MEHTA APP for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 10/03/2000

ORAL JUDGEMENT

This application under Section 482 of the Code of Criminal Procedure prays to quash and set aside the

proceedings in Criminal Case No.1436 of 1987 pending before the learned Chief Judicial Magistrate, Baroda.

2. The learned advocate appearing for the petitioners has submitted that the dispute between the petitioners and the original complainant is essentially of a civil nature and relates to purely a commercial transaction. It is further submitted that, pursuant to the aforesaid commercial transaction, the complainant had also filed a civil suit which has been decreed. It is confirmed by the learned advocate appearing for the respondent-complainant that such civil suit was filed and is decreed.

3. Going through the averments made in the petition and in the complaint, it appears that the dispute has arisen out of sale and supply of machines of which the quality and output was not found to be satisfactory by the complainant. On the basis of vague allegation of dishonesty, it is complained that the petitioners had committed offences under Sections 406, 420, 427 and 114 of the Indian Penal Code. However, it is not seriously disputed that the dispute was primarily of a civil nature for which the civil remedy was resorted to. In these facts and circumstances, no useful purpose can be served by allowing the criminal proceedings to proceed further, especially when the complaint itself does not disclose the essential ingredients of the offences alleged in the complaint.

4. The learned Additional Public Prosecutor has also submitted that the complaint does not disclose the offences under the sections mentioned above.

4. In these facts and circumstances, the application is allowed and the process and proceedings in Criminal Case No.1436 of 1987 pending before the learned Chief Judicial Magistrate, Baroda are hereby quashed and set aside. Rule is made absolute with no order as to costs.

Sd/-

(KMG Thilake)

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